



25  
FILED

SEP 21 1945

CHARLES ELMORE DROPLEY  
CLERK

# In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 231

COWELL PORTLAND CEMENT COMPANY,  
a corporation,

*Petitioner,*

vs.

NATIONAL LABOR RELATIONS BOARD,

*Respondent.*

## REPLY BRIEF OF PETITIONER ON PETITION FOR WRIT OF CERTIORARI

MAX THELEN,

GORDON JOHNSON,

111 Sutter Street,

San Francisco, California,

*Attorneys for Petitioner.*

## Subject Index

---

	Page
Point A—The United States Circuit Court of Appeals erred in holding that the Board had jurisdiction in a case in which the Board's findings affirmatively declared that the employer is not engaged in commerce (as defined in the Act) and in which there is neither finding nor evidence that the employer's acts burden or obstruct the commerce of anyone else	2
Point B—The United States Circuit Court of Appeals erred in holding that, in the case of an unfair labor practice, the Board may award back pay to a striking employee for the time during which he was on strike, even though there has been no request for reinstatement .....	13
Point C—The United States Circuit Court of Appeals erred in holding that back pay may be awarded for the period of time during which the employees unreasonably delay the filing with the Board of a proper charge .....	19
Point D—The United States Circuit Court of Appeals erred in holding that, in a case in which the employee has received other regular and substantially equivalent employment, the Board may direct reinstatement, without any finding of fact showing that the effectuation of the policies of the Act require such reinstatement .....	21

## Table of Authorities Cited

	Pages
Chamber of Commerce of Minneapolis v. Federal Trade Commission, 13 Fed.(2d) 673, 685.....	2, 11
Eagle-Picher Mining & Smelting Co. v. National Labor Relations Board, 16 N.L.R.B. 727, 800, 812, 119 Fed.(2d) 903, 914, 915.....	15, 16
Ford Motor Company, In re, 31 N.L.R.B. 994.....	22, 23
Idaho Potato Growers, Inc. v National Labor Relations Board, 144 Fed.(2d) 295.....	14
Magnolia Petroleum Co. v. National Labor Relations Board, 112 Fed.(2d) 545, 552.....	5
National Labor Relations Board v. Carlisle Lumber Co., 94 Fed.(2d) 138, 99 Fed.(2d) 533.....	14
National Labor Relations Board v. Cowell Portland Cement Company, 108 Fed.(2d) 198, 148 Fed.(2d) 237, 241.....	9, 11, 20
National Labor Relations Board v. Long Lake Lumber Company, 34 N.L.R.B. 700, 707, 709, 718, 719, 138 Fed.(2d) 363, 364 .....	16, 18
National Labor Relations Board v. Mall Tool Co., 119 Fed.(2d) 700, 702, 704.....	20
National Labor Relations Board v. Reed & Prince Mfg. Co., 118 Fed.(2d) 874, 887, 888.....	14
National Labor Relations Board v. A. Sartorius & Co., 140 Fed.(2d) 203.....	14
National Labor Relations Board v. Sunshine Mining Co., 110 Fed.(2d) 780.....	15
Phelps-Dodge Corporation v. National Labor Relations Board, 313 U.S. 177, 193, 195, 196, 198, 203, 204.....	21, 22, 23
Polish National Alliance v. National Labor Relations Board, 322 U.S. 643.....	10
Republic Aviation Corporation v. National Labor Relations Board, U. S. Supreme Court, No. 226, 1944 Term.....	23
Subin v. National Labor Relations Board, 113 Fed.(2d) 326 .....	14
United Corporation v Federal Trade Commission, 110 Fed.(2d) 473, 476.....	2, 11

